United Nations CAT/C/SVK/CO/3

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the third periodic report of Slovakia*

1. The Committee against Torture considered the third periodic report of Slovakia (CAT/C/SVK/3/Rev.1) at its 1330th and 1333rd meetings, held on 28 and 29 July 2015 (see CAT/C/SR.1330 and CAT/C/SR.1333), and adopted the following concluding observations at its 1347th meeting, held on 10 August 2015.

A. Introduction

2. The Committee expresses its appreciation to the State party for having submitted its third periodic report, as well as the comprehensive written replies (CAT/C/SVK/Q/3/Add.2) provided to the Committee.

3. The Committee also expresses its appreciation for the quality of its dialogue with the State party's large, high-level multisectoral delegation and the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the State party's accession to and ratification of the following international instruments:

(a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in May 2010;

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in May 2010;

(c) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in March 2012;

(d) International Convention for the Protection of All Persons from Enforced Disappearance, in December 2014.

5. The Committee welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including the following:

* Adopted by the Committee at its fifty-fifth session (27 July to 14 August 2015).

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(a) Amendment of the Criminal Code to extend the legal basis of torture to include cases in which a public authority instigates or gives express or tacit consent to torture, in 2009;

(b) Amendments to the law on the execution of prison sentences, in 2013;

(c) Amendments to the law on the execution of remand detention, in 2013;

(d) Adoption of Act No. 78/2015, on control of the execution of some decisions through technical means, relating to the serving of alternative sentences, and the application of paragraph 65a of the Criminal Code, concerning the penalty of house arrest, in 2015;

(e) Amendment of article 179 (1) of the Criminal Code and the Rules of Criminal Procedure, modifying the definition of human trafficking to include new forms of punishable conduct, in 2013;

(f) Amendment of the School Law that, inter alia, regulates enrolment in special classes, in 2015.

6. The Committee also welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) Adoption of the strategy for Roma integration up to 2020, on 11 January 2012, and of the national action plan for the Decade of Roma Inclusion for the years 2011-2015;

(b) Adoption of the concept for the stabilization and modernization of the judiciary, in 2013;

(c) Adoption of the national action plan for the prevention and elimination of violence against women for 2014-2019, on 18 December 2013;

(d) Establishment of the Coordination and Methodology Centre for Prevention and Elimination of Violence against Women and Domestic Violence and of a free 24-hour State-funded helpline for women who are experiencing violence, in March 2015;

(e) Adoption of the national strategy for the protection of children against violence, on 15 January 2014, and of the national action plan for children for 2013-2017, and establishment of a national coordination centre for addressing issues related to violence against children;

(f) Adoption of the national programme to fight human trafficking for 2015-2018 and establishment of a national hotline for the protection of human trafficking victims.

C. Principal subjects of concern and recommendations

Definition of torture

7. While noting certain amendments to national legislation in relation to the crime of torture, the Committee is concerned that a comprehensive definition of torture incorporating all elements of article 1 of the Convention, in particular a specific reference to discrimination, is not included in the Criminal Code (arts. 1 and 4).

The Committee urges the State party to adopt a definition of torture that covers all elements contained in article 1 of the Convention and ensure that penalties for torture are commensurate with the gravity of this crime in accordance with article 4 (2) of the Convention. In this regard, the Committee draws attention to its general comment No. 2 (2007) on the implementation of article 2 by States parties, in which it states, in

paragraph 9, that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity.

Fundamental legal safeguards

8. The Committee is concerned that detained persons do not enjoy, in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, in particular after arrest by police, and that minors can undergo initial questioning without the presence of their lawyers, parents or other trusted persons (arts. 2, 12, 13 and 16).

The State party should take effective measures to guarantee that all detained persons, including minors, are afforded, in practice, all fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards, including:

(a) **To be informed, both orally and in writing, in a language that they understand, about the charges against them and about their rights, and to sign a paper confirming that they have understood the information provided to them;**

(b) **To have prompt access to a lawyer from the very outset of deprivation of liberty and, if necessary, to legal aid, including during the initial interrogation;**

(c) **To have immediate access to an independent medical examination, free of charge and not in the presence of police officers;**

(d) **To notify a family member or any other person of their own choice of their detention, immediately after apprehension and not only after they have seen a judge.**

Duration of pretrial detention

9. The Committee is concerned at the length of pretrial detention, which can last up to five years (arts. 2 and 11).

The State party should amend legislation with a view to reducing the duration of pretrial detention, which should be used as an exception, applied for limited periods of time, clearly regulated and subject to judicial supervision at all times in order to guarantee fundamental legal and procedural safeguards. The State party should consider replacing pretrial detention with non-custodial measures, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). In addition, the Committee recommends that the State party ensure that redress and compensation are provided to victims of unjustified prolonged pretrial detention.

Conditions of detention

10. The Committee is concerned at the insufficient number of psychiatrists in the prison system, as well as at the absence of a purposeful regime, including outdoor exercise, for remand prisoners and in particular for those serving life sentences (arts. 2, 11 and 16).

The Committee urges the State party to take the steps necessary to ensure that prison conditions are in line with relevant international human rights standards, and, in particular, to:

(a) **Ensure, with a view to preventing the deterioration of their mental faculties and social abilities, that all persons deprived of their liberty, and in particular prisoners serving life sentences, have access to a regime of organized and purposeful out-of-cell activities, and to take measures to integrate prisoners serving life sentences into the general prison population;**

(b) Strengthen the independent and regular monitoring of all places of deprivation of liberty by the ombudsperson and other independent and impartial mechanisms, including by conducting unannounced visits to places of deprivation of liberty, and to enable them to deal with the complaints of inmates about their conditions of detention and provide effective follow-up to such complaints;

(c) Ensure the presence of a sufficient number of psychiatrists in the prison health-care system.

Excessive use of force by law enforcement officials, including violence against Roma

11. The Committee is concerned:

(a) At reports alleging cases of excessive use of force by law enforcement officials, including against minors, mostly immediately after apprehension, which may amount to ill-treatment or torture;

(b) At the low number of complaints, prosecutions and convictions in such cases;

(c) That investigations into allegations of ill-treatment by police officers are carried out by the Control and Inspection Service Department of the Ministry of the Interior, which is a department within the same structure employing the alleged perpetrators;

(d) That no charges were brought against police officers who participated in the raid on 19 June 2013 on the Roma settlement of Moldava nad Bodvou in eastern Slovakia, which resulted in the apprehension of 15 persons, a number of whom reportedly were seriously ill-treated by the police during their apprehension and subsequent detention;

(e) That all 10 policemen who physically abused and inflicted degrading treatment on six Roma juveniles in the city of Košice on 21 March 2009 were acquitted in the first instance judgement by the Košice II District Court on 27 February 2015, since the court refused to admit the video recording of the incriminating act as a legally obtained piece of evidence (arts. 2, 12-14 and 16).

The State party should:

(a) Carry out prompt, impartial, thorough and effective investigations into all allegations of excessive use of force, including torture and ill-treatment, by law enforcement officials, and ensure that those suspected of having committed such acts are immediately suspended from their duties throughout the period of investigation, while ensuring that the principle of presumption of innocence is observed;

(b) Provide the Committee with information on the number of cases of excessive use of force by law enforcement officials that have been investigated, disaggregated by age, gender and ethnic or national origin of the victims; the number of perpetrators who have been prosecuted for acts of torture and ill-treatment; and the penalties applied to those found guilty;

(c) Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that the victims are afforded appropriate redress;

(d) Ensure that offences motivated by discrimination constitute an aggravating circumstance in criminal prosecution;

(e) Establish an independent monitoring and oversight mechanism that complies with the requirement of institutional independence in order to avoid conflict of interest in the investigation of complaints by peers;

(f) Ensure that prosecutors and judges are automatically notified of all cases of ill-treatment and torture in police detention facilities, regardless of the possible absence of visible injuries, make video recordings of all actions by the police, including interrogations, and ensure that persons who have made allegations of torture and ill-treatment, as well as witnesses to such acts, are protected from reprisals;

(g) State at the highest political level that there will be no tolerance for excessive use of force against persons deprived of their liberty by law enforcement officials, including against members of ethnic minorities;

(h) Take measures to eradicate all forms of harassment and ill-treatment by police during investigations and ensure that law enforcement officials are trained in professional techniques and international standards on the use of force and firearms;

(i) Continue the recruitment of police officers of Roma origin and expand the functions of Roma police specialists.

Involuntary sterilization of Roma women

12. The Committee is concerned at reports of sterilization of Roma women without free and informed consent and about the difficulties of victims in obtaining redress (arts. 2, 14 and 16).

The Committee recommends that the State party investigate promptly, impartially and effectively all allegations of involuntary sterilization of Roma women and provide victims with fair and adequate redress. Medical personnel who have conducted sterilizations without free, full and informed consent should be held criminally liable, prosecuted and punished. They should also be trained on appropriate means of obtaining free and informed consent from women undergoing sterilization, and all written materials relating to sterilization should be translated into the Romani language and other relevant languages.

Efficiency of the judicial system and length of judicial proceedings

13. The Committee is concerned at the lack of efficiency of the judicial system, including the slowness of judicial proceedings, which creates a backlog of cases. It is concerned in particular about criminal proceedings involving cases of excessive use of force and abuse of power by law enforcement officials, which have resulted in acquittals that were subsequently quashed by a higher judicial instance and have been pending before the lower courts for several years, such as in the Košice case (arts. 2, 12, 13 and 16).

The State party should improve the functioning of the judicial system in order to enhance the speed and efficiency of judicial proceedings, in particular with regard to criminal justice, and reduce the backlog of cases in its courts.

Domestic violence

14. While noting the steps taken by the State party to address violence against women and domestic violence, the Committee is concerned at the fact that domestic violence is not a separate crime in the Criminal Code. It is also concerned at the wide prevalence of violence against women in the State party and the low number of complaints in this regard, as well as the low number of investigations and prosecutions (arts. 2, 12-14 and 16).

The Committee recommends that the State party:

(a) Define and introduce domestic violence, including sexual violence and marital rape, as specific offences in the Criminal Code, with appropriate sanctions;

(b) Ensure the effective implementation of the national action plan for the prevention and elimination of violence against women for 2014-2019 and regularly assess its results;

(c) Ensure the effective functioning of the free 24-hour State-funded helpline for women who are experiencing violence;

(d) Establish an effective and independent complaints mechanism for victims of domestic violence;

(e) Ensure that all allegations of domestic violence, including sexual violence and violence against children, are registered by the police and that all allegations of domestic violence are promptly, impartially and effectively investigated and the perpetrators prosecuted and punished;

(f) Ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, safe and adequately funded shelters, and redress, including rehabilitation.

Trafficking in human beings

15. While welcoming the amendments to legislation modifying the definition of human trafficking to include new forms of punishable conduct, the Committee is concerned that the State party remains a country of origin, transit and destination for human trafficking, in particular for labour and sexual exploitation and forced begging. The Committee is also concerned at the very lenient or suspended sentences given to perpetrators of trafficking in human beings (arts. 2, 10, 12-14 and 16).

The State party should:

(a) Vigorously implement international and domestic legislation aimed at countering trafficking, allocate sufficient funds to combat trafficking and conduct national prevention campaigns on the criminal nature of such acts;

(b) Take effective measures to prevent and eradicate human trafficking, including by providing specialized training to public officials on identifying victims and on investigating, prosecuting and sanctioning perpetrators;

(c) Ensure the effective implementation of the national programme to fight human trafficking for 2015-2018 and the round-the-clock functioning of the national hotline for the protection of human trafficking victims;

(d) Promptly, effectively and impartially investigate the crime of trafficking in persons and related practices, and prosecute and punish perpetrators in accordance with the gravity of the crime;

(e) Increase the protection of and provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelter and assistance in reporting incidents of trafficking to the police;

(f) Enhance international cooperation with regard to preventing and punishing trafficking, and prevent the return of trafficked persons to their countries of origin if there are substantial grounds to believe that they would be in danger of torture;

(g) Provide the Committee with comprehensive disaggregated data on the number of investigations, prosecutions and sentences handed down with regard to perpetrators of human trafficking, and on the provision of effective redress to victims.

National human rights institution

16. The Committee is concerned that the Slovak National Centre for Human Rights does not have a sufficiently broad mandate. It is also concerned at the non-transparency of its recruitment procedure, the lack of diversity in its staff, and its insufficient degree of immunity and independence.

The Committee recommends that the State party amend the relevant legislation, with a view to strengthening the mandate and independence of the Slovak National Centre for Human Rights in order to bring it into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and take steps to ensure the provision of sufficient financial and human resources to enable the Centre to carry out its mandate independently and effectively.

Non-refoulement and use of diplomatic assurances

17. The Committee is concerned that the State party does not fully comply with its obligations under article 3 of the Convention with regard to respect of the principle of non-refoulement. It is also concerned that the State party has accepted diplomatic assurances in relation to the extradition of persons from its territory to States where their life or personal integrity could be threatened, including in the case of Anzor Chentiev (arts. 3 and 16).

The Committee recommends that the State party:

(a) **Ensure that it complies fully with its obligations under article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by the competent authorities and are guaranteed fair treatment at all stages of proceedings, including an opportunity for effective and impartial review by an independent decision-making mechanism on expulsion, return or extradition, with suspensive effect;**

(b) **Fulfil its non-refoulement obligations and guarantee the right to appeal the issuance of an extradition warrant when there are substantial grounds for believing that a person would be at risk of being subjected to torture;**

(c) **Refuse to accept diplomatic assurances in relation to the extradition of persons from its territory, since those assurances cannot be considered as a safeguard against torture or ill-treatment in States in which there are substantial grounds for believing that such persons would be in danger of being subjected to torture upon their return.**

Training

18. The Committee is concerned at the absence of specific methodologies to evaluate the effectiveness and impact of training and educational programmes provided to law enforcement personnel and other public officials on the provisions of the Convention that relate to reducing the number of cases of torture and ill-treatment. It is also concerned that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol) is not provided to all medical professionals dealing with persons deprived of liberty (art. 10).

The State party should:

(a) **Develop and implement specific methodologies to assess the effectiveness and impact of training and educational programmes provided to law enforcement and other public officials on the provisions of the Convention;**

(b) **Ensure that the Istanbul Protocol is made an essential part of training for all medical professionals and other public officials involved in work with persons deprived of their liberty;**

(c) **Ensure instruction and methodical guidance for police on the need to respect the principles of necessity and proportionality during police interventions, as well as on the absolute prohibition of torture and other State obligations under the Convention.**

Data collection

19. The Committee regrets the absence of comprehensive statistical data, disaggregated by age, gender and ethnic or national origin, on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement and prison personnel, or on trafficking and domestic and sexual violence, including means of redress.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including statistics, disaggregated by age, gender and ethnic or national origin, on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment, trafficking and domestic and sexual violence, and on means of redress, including compensation and rehabilitation, provided to the victims.

Follow-up procedure

20. The Committee requests the State party to provide, by 14 August 2016, follow-up information in response to the Committee's recommendations relating to the following: ensuring fundamental legal safeguards; carrying out investigations into allegations of the excessive use of force; providing data on such investigations; and publicly stating a policy of zero tolerance of the excessive use of force, as contained in paragraphs 8, 11 (a), 11 (b) and 11 (g), respectively, of the present document.

Other issues

21. The Committee invites the State party to consider ratifying the United Nations human rights treaties to which it is not yet party, namely, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

22. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations in appropriate languages through official websites, the media and non-governmental organizations.

23. The State party is invited to submit its next report, which will be the fourth periodic report, by 14 August 2019. For that purpose, the Committee will, in due course, transmit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.